

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.736 of 2015

S.Dhanapalan

...Appellant/Petitioner

Vs

1.The Superintending Engineer
Public Works Department
Water Resources Organization
Aaliaru Basin Circle
Pollachi
Coimbatore District.

2.The Executive Engineer
Public Works Department
Water Resources Organization
Aaliaru Basin Division
Pollachi
Coimbatore District.

3.Kumarapalayam Grama Neerinai Payanpaduthuvor Sangam
Represented by its President
S.R.Rajagopal
Son of Ramabadra Naidu
Sultanpet, Sulur Taluk
Coimbatore District.

...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act,
to set aside the order passed in W.P.No.4257 of 2014 dated
30.07.2014.

PRAYER IN WP.4257/14:-

Writ Petition filed Under Article 226 of the Constitution
of India praying to issue a writ of certiorari calling for the
records of the 2nd respondent, the order made in Se. Mu. Ka. No.
Tech Dept/ Va Aa/Ko.10/29M/ dated 23.1.2014 and quash the same

For Appellant : Mr.M.R.Thangavel

For R1 & R2 : Ms.A.Srijayanthi,
Special Government Pleader

For R3 : Mr.C.Prakasam

JUDGMENT

P.VELMURUGAN, J.

This writ appeal is directed against the order dated 30 July, 2014 in W.P.No.4257 of 2014, whereby and whereunder, the learned Single Judge dismissed the writ petition filed by the appellant, on the ground that the third respondent association was not consulted by the appellant before laying of pipeline.

2. Originally, the Revenue Divisional Officer, Coimbatore, vide proceedings dated 13 June, 2011, accorded permission to the appellant to lay a pipeline through Government poramboke lands and take water through a distance of more than 10 kms. from one of his lands to another. The Assistant Engineer, Highways Department, Sultampet also granted permission, vide proceedings dated 25 August, 2012. The said permission was later cancelled by the second respondent, viz., the Executive Engineer, by the order dated 23 January, 2014 impugned in the Writ Petition. Aggrieved against the said cancellation order, the appellant has preferred the writ petition before the Writ Court.

3. In the writ petition, the second respondent filed a counter affidavit stating that the appellant has laid a pipeline on the banks of Parambikulam Aliyar Canal and had obtained permission without notice to the Ayacutdars and that when the Ayacutdars raised objection, the permission accorded to the appellant was cancelled. The second respondent further stated that there is a Water Users Association, constituted in pursuance of the guidelines issued by the Government of Tamil Nadu. However, the Association was not impleaded in the first instance as a party to the writ petition, but, later, they got impleaded.

4. It is quite obvious that without consulting the Water Users Association, permission was obtained by the appellant behind their back. Later, when this fact came to the knowledge of Ayacutdars, they raised objection. Based on the objection raised by the Ayacutdars, the permission granted to the appellant vide proceedings dated 13 June, 2011 came to be cancelled.

5. Learned counsel for the appellant contended that before cancelling the permission granted to the appellant for laying the pipeline, he was not given any opportunity to put forth his submission and the same is in violation of principles of natural justice. Therefore, he has filed this writ appeal, challenging the order of cancellation for laying the pipeline.

6. Heard the submissions made by the learned counsel on either side and perused the records.

7. It is the main contention of the learned counsel for the appellant that though the Revenue Divisional Officer, Coimbatore accorded permission on 13 June, 2011 to the appellant to lay a pipeline through Government poramboke lands and take water to the other lands of the appellant, the same was cancelled by the second respondent on 23 January, 2014, even before the laying work was completed.

8. The learned counsel also submitted that the learned Single Judge has failed to consider that before passing the order dated 23 January 2014, impugned in the writ petition, no notice was served on the appellant asking him to show cause as to why the sanction accorded to him on 13 June, 2011 should not be cancelled, which is in violation of principles of natural justice.

9. The learned counsel for the respondents submitted that before the sanction was accorded by the Revenue Divisional Officer, Coimbatore, to the appellant, the Water Users Association was not consulted and behind their back, the appellant got the sanction. After coming to know about the laying of pipeline in the poramboke lands to take water through a distance of more than 10 kms., the Association has raised objections. However, the Association was not impleaded in the writ petition. Later, vide order dated 30 June, 2014 passed in M.P.No.2 of 2014, the Association has been impleaded as third respondent. The learned Single Judge has considered the fact that the third respondent Association has not been consulted at the time of getting sanction and hence, dismissed the writ petition.

10. It is not in dispute that the appellant was accorded sanction on 13 June, 2011 and later on, the same was cancelled by the second respondent on 23 January, 2014, which was challenged by the appellant in W.P.No.4257 of 2014. Aggrieved against the order passed in the Writ Petition, the appellant has filed this appeal.

11. It is an admitted fact that no notice was served on the appellant before cancelling the permission granted to him. It is also an admitted fact that without serving notice on the appellant and without giving any opportunity to him, merely based on the objection raised by the third respondent Association, the permission accorded to the appellant was cancelled by the second respondent unilaterally.

12. Thus, it is manifest that no opportunity was given to the third respondent Association before sanction was accorded to the appellant and similarly, no opportunity was also given to the appellant before cancelling the permission granted on 13 June 2011, based on the objection made by the third respondent Association.

13. Now, both the appellant and the third respondent are parties to this writ appeal. The respondents 1 and 2 admitted that they have not given any opportunity to the appellant before cancelling the permission and merely based on the objection raised by the Ayacutdars, viz., the third respondent, the second respondent cancelled the order.

14. Since the learned Single Judge has failed to consider the aspect that no opportunity was given to the appellant to put forth his submissions, the impugned order is liable to be set aside and accordingly, the same is set aside. The second respondent is directed to give an opportunity to the appellant as well as the third respondent to submit their objections and consider the matter afresh in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

The writ appeal is allowed on the above terms. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

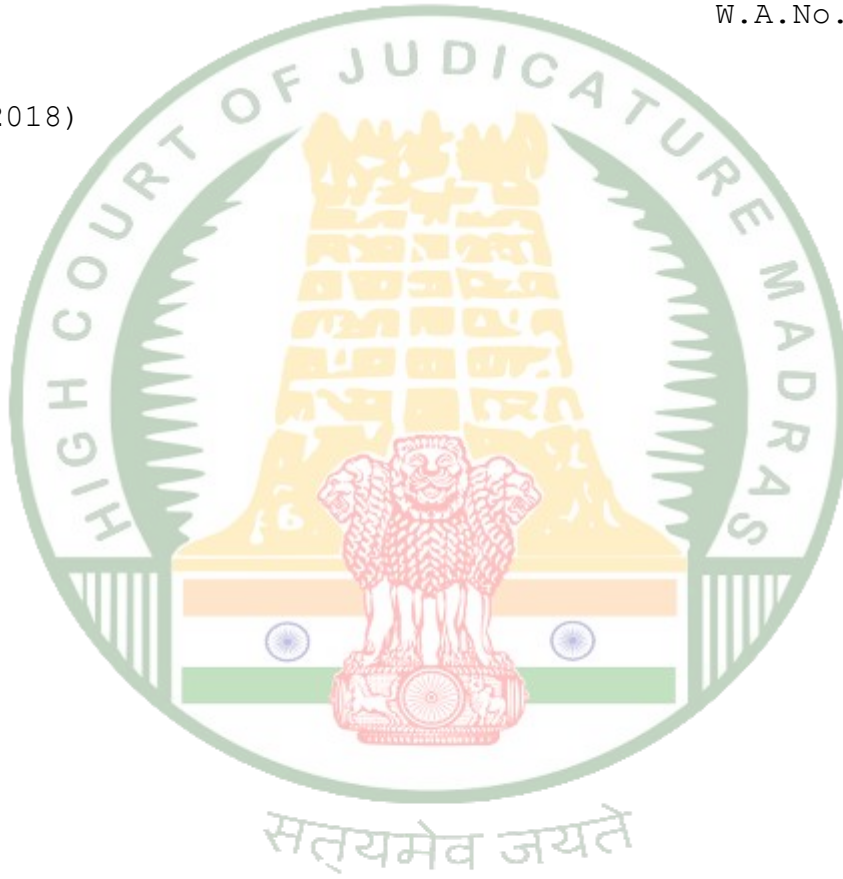
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+1cc to Mr.M.R.THANGAVEL, Advocate, S.R.No.136
+1cc to Mr.C.PRAKASAM, Advocate, S.R.No.224
+1cc to the Government Pleader, S.R.No.163

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SJ(CO)
TR(06/02/2018)



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